

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7357 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NANUBHAI PRABHUDAS PATEL SINCE DECEASED THROUGH HIS HEIRS & L.R
Versus
DISTRICT DEVELOPMENT OFFICER

Appearance:

MR AJ PATEL with MR AB MUNSHI for Petitioners
RULE UNSERVED for Respondent No. 1
MR IM PANDYA AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/08/2000

ORAL JUDGEMENT

The petitioner is aggrieved by the order passed
by the Chief Secretary, Revenue Department, State of
Gujarat, dated 5.5.1992, passed in SRD/BKP/Suo Motu/GDN/
2 of 1992 cancelling the NA permission granted in respect

of Survey No.1057 admeasuring 1 acre ____ gunthas situated in the outskirts of village Shertha of Gandhinagar District. The NA permission was granted by the TDO by an order dated 27.4.1978. Before passing the order a show-cause notice was issued upon the petitioner on 17.3.1992 calling upon the petitioner to show cause why the NA permission granted could not be cancelled and further asking him to appear at Gandhinagar in the Collectorate on 31.3.1992. According to the petitioner, this letter was delivered to the Vahivatकर्ता of the petitioner Shri Atmaram B. Patel by hand delivery by a peon on 27.4.1992 in the forenoon and on that very day Shri Atmaram B. Patel presented himself before the Collector, Gandhinagar, with the said letter and brought to his notice that though the letter was dated 17.3.1992, it was delivered to him on that day in the forenoon and that the date of hearing, namely, 31.3.1992 had already passed. That the petitioner wanted to make a detailed submission in reply to the notice but the Collector expressed his inability to do anything in the matter as the matter was being dealt with by the State Government.

Ultimately, the impugned order came to be passed on 5.5.1992 cancelling the NA permission.

Number of contentions are raised by learned counsel Mr A.J. Patel appearing for the petitioner. According to him, the action of issuance of show-cause notice after a lapse of about 14 years in itself is bad. He further submitted that the show-cause notice was served after the date of hearing had gone. This has been contended on oath by the petitioner and not controverted by the respondent-authorities. No affidavit-in-reply has been filed. The order is therefore passed in violation of principles of natural justice. He, therefore, urged that the petition be allowed.

Mr Pandya, the learned A.G.P., has opposed the petition. According to him, the NA permission was granted subject to certain conditions particularly that the construction has to be commenced within six months of the grant of permission and to be completed within two years thereof whereas the petitioners have not complied with this condition and the permission has therefore been cancelled. However, he could not meet with the contentions regarding the violation of principles of natural justice.

Having regard to the peculiar facts of the case, it is clear that the show-cause notice is given after a

lapse of about 14 years. In this regard, there are number of decisions which need to be considered. They are :-

- (1) State of Gujarat v. Patel Raghav Natha
10 GLR 992
- (2) Patel Chhotabhai Madhavbhai v. State
1995 (1) GLR 407
- (3) Jailaxmi Estate v. State of Gujarat
1993 (2) GCD 377

However, since the decision is taken without affording audience to the petitioner, this Court at this stage does not express any opinion either on merits or on question of delay in taking action by the respondent-authorities. But the order passed in violation of principles of natural justice cannot be permitted to stand. Same deserves to be quashed and set aside. The authority concerned will have to be directed to hear the petitioners and decide the issue in show-cause notice afresh in accordance with law. The petition deserves to be allowed to that extent.

The petition is allowed. The impugned order passed by the Chief Secretary, Revenue Department, State of Gujarat, dated 5.5.1992, passed in SRD/BKP/Suo Motu/GDN/ 2 of 1992 is hereby quashed and set aside. The petitioner will file a suitable reply to the show-cause notice within 15 days from today before the appropriate authority. The authorities will thereafter fix the suitable date for hearing the petitioner and then decide the issue in the show-cause notice after considering the contentions that may be raised by the petitioner so also the legal situation as emerging from various decisions of the High Court or the Apex Court as the case may be. The decision will be taken as expeditiously as possible preferably, within eight weeks from the date of filing of reply by the petitioner.

Rule is made absolute accordingly. No costs.

(mohd)